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Committee on Civil Rules of Procedure for
Limited Jurisdiction Courts
1501 W. Washington St.
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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO ADOPT JUSTICE COURT)
RULES OF CIVIL PROCEDURE)

Supreme Court No. R-12-0006

Amended Rule Petition

The Court's January 13, 2012 Order opened this rule petition for comment until March 16, 2012. The Order also allowed the filing of an amended rule petition before April 27, 2012. Petitioner respectfully files this amended rule petition with the attached, revised version of the proposed rules.

1. Summary of comments. Thirteen comments, from justices of the peace, attorneys, and the State Bar of Arizona, were filed during the initial nine-week comment period.

The Civil Practice and Procedure Committee and the Rules Committee of the State Bar engaged in a robust review process of this rule petition prior to its consideration by the Board of Governors.¹ Petitioner is pleased to note that the Bar’s comment “...commends the Committee for its efforts and supports the adoption of the Proposed Rules with the modifications detailed below.”

Other comments posted on the Rules Forum such as these opposed a specialized set of civil rules for justice court:

“Rewriting the existing Rules will do little to simplify the legal process or level the playing field.” (Comment by Mr. Seidberg)

“I do not feel the current proposed rules will accomplish the goals set forth by the Supreme Court. It will not reduce costs, nor do I expect it to make case flow more efficient for the justice courts. Frankly, I think the rules should be left alone.” (Comment by Ms. De La Rosa)

“The proposed rules did nothing to simplify the rules.” (Comment by Ms. Nix)

Every comment, including those supporting the rule petition, had some criticism of the proposed rules. RCiP.LJC took a positive view of these criticisms,

¹ Several RCiP.LJC members, as well as the Chair and staff, attended one or more of these meetings at the State Bar.

which led to improvements in the draft rules.² A discussion of specific comments follows.

2. Renumbering the rules. Judge Steven McMurry's comment said in part:

"I oppose the proposed Civil Rules of Procedure for Limited Jurisdiction Courts. My fundamental objection lies with the decision to jettison the numbering system used with the Federal Rules, and to adopt a new and unique numbering system. A motion for summary judgment would no longer be governed by Rule 56. It would now be a motion filed under Rule 129... We should not discard the Federal Rules in favor of our own unique system. In both the federal system and in Arizona case decisions, the details and meaning of the Federal Rules have been 'fleshed out' by the common law system. There is, however, no common law system developing the law as applied in the Arizona Justice Courts."

The Committee discussed its rationale for renumbering and re-sequencing the justice court rules in its report to the Arizona Judicial Council. (Please see the report at pages 6–8.) The report noted at page 4, "...most of the draft rules have counterparts in the superior court rules, and therefore case law developed under the Ariz. R. Civ. P. will apply to issues arising under the JCRCPP." Although their report stated that existing common law would apply to these rules, the members decided to make the Committee's intent even clearer by the following two additions to the content of the rules.

² The minutes of the March 30, 2012 meeting detail the members' discussion of the comments. Three of the individuals who filed comments appeared at that meeting and shared their views with Committee members.

- A new provision in Rule 101(d) says:

“Where the language or purpose of an Arizona justice court rule parallels that of a superior court rule, appellate court decisions interpreting the superior court rule are binding with respect to applying or interpreting the justice court rule.”

For example, JCRCP Rule 129 and Rule 56 of the Ariz. R. Civ. P. both concern summary judgment. Because the language and purpose of Rule 129 and Rule 56 are parallel, case law such as *Orme School v Reeves* would continue to apply in justice court. The JCRCP now explicitly provides for the application of Arizona appellate decisions concerning correlative superior court rules.

- A table in an appendix to the original draft of the JCRCP cross-referenced sub-sections of justice court rules to counterpart superior court rules. The revised draft goes a step further. There are now brackets that contain the correlative superior court rule in the text after each sub-section of a justice court rule.³ Superior court cross-references are therefore immediately available without the necessity of turning to the lengthy table in the appendix.

³ An introductory comment to the justice court rules explains the purpose of these bracketed references.

These changes should assist justice court judges and litigants in locating and applying case law that is relevant to a justice court rule, notwithstanding the new numbering scheme of these proposed rules.⁴

3. Incorporation by reference. Judge David Widmaier commented:

“...the vast number of rules incorporated by reference make the new set of rules cumbersome if not unusable. It is our opinion that what we now have is two sets of rules to replace one. We would like to see many of the rules that are incorporated by reference to: either be incorporated as a rule verbatim, or incorporated through a re-write, or both.”

RCiP.LJC acknowledges the merits of this comment, and it has eliminated the use of incorporation by reference in the revised draft. Rules that were previously incorporated by reference are now included in the JCRCP, albeit with simplified text.⁵ The additional text increased the length of these rules, but allowed the elimination of Table 1 of the earlier version (*“Rules of the Ariz. R. Civ. P. incorporated by reference in the JCRCP”*). The current version better fulfills the

⁴ The proposed justice court rules are not the only Arizona rules to deviate from the numbering scheme of the Rules of Civil Procedure; the Arizona Rules of Family Law Procedure also uses different numbering.

⁵ Portions of three superior court rules (Rule 4.1, service of process within Arizona; Rule 4.2, service of process outside the State of Arizona; and Rule 64.1, civil arrest warrant) are relatively technical, and there are no modifications to the text of these rules. However, rather than including the complete text of these infrequently used superior court rules within the body of Rules 113 and 145, respectively, the justice court rules now direct the reader to an appendix in the JCRCP where the relevant provisions of these three superior court rules are reproduced in their entirety.

goal of having a self-contained set of rules (“*one-stop shopping*”) for justice courts.

4. Special rules for collection cases involving assigned debts. A large percentage of civil cases in justice court involve collection of assigned debts. As noted at page 6 of the petition, RCiP.LJC members previously considered issues about pleading and disclosure in assigned debt cases. An RCiP.LJC workgroup succeeded in breaking an RCiP.LJC impasse and achieving a resolution, later ratified by the full Committee, concerning the disclosure requirements of Rule 121(a)(3) for assigned debt cases. In addition, RCiP.LJC’s proposed rule for complaints in assigned debt cases, Rule 110(b)(2), requires identification of the original owner of the debt.

The State Bar’s comment recommended that Rule 110(b)(2) also contain a requirement that the date of default, and the amount due as of the date of default, be included in any complaint for collection of an assigned debt. RCiP.LJC members had extensive and continuous discussions about these requirements and related issues, and the version of the proposed rules filed with the rule petition reflects hard-fought compromises reached by the members on these subjects. At its March meeting the members reaffirmed their compromise and declined to adopt the Bar’s recommended revisions to Rule 110(b)(2). RCiP.LJC notes that there is no universal agreement on the meaning of the date of default (see for example

Navy Federal Credit Union v Jones, 187 Ariz. 493, Division Two, 1996), and the Bar’s proposal might add to rather than reduce issues in debt collection litigation. In addition, the Bar’s recommendation may create a substantive requirement, yet it is RCiP.LJC’s position that policy decisions rather than rules of procedure should generate substantive requirements.

5. Simplification. RCiP.LJC attempted a substantial simplification of the superior court rules, but certain comments expressed that the proposed justice court rules should be even simpler.⁶ In light of these comments, revisions in the attached draft further simplify these rules. The draft makes dozens of additional grammatical, syntactical, and stylistic revisions, including a number suggested by Judge Widmaier and by the State Bar in its “redline” version. There are also additional explanations of legal jargon used in the JCRCF, and a list in the appendix has references to over thirty words and terms defined in the rules.

Nevertheless, RCiP.LJC consciously declined to make the proposed rules comprehensible to the least educated litigant. One member noted that the proposed rules should not use the prose of Shakespeare, but neither should they use the prose of Dr. Seuss. Legal procedures must still be carefully prescribed and accurately detailed. The proposed rules attempt to strike healthy balances between simplicity,

⁶ However, some of these comments do not suggest any specific text with simpler verbiage.

functionality, and the inherent authority of court rules. A handbook for self-represented litigants might be a valuable adjunct to the proposed rules and could provide additional explanations and simplification.

6. Conclusion. A committee established in 1934 drafted what later became the Federal Rules of Civil Procedure. The members of RCiP.LJC are not comparable to the distinguished members of that committee, but they do share certain attributes:

“[S]ince most of the members of the Committee were active practicing lawyers, their ideas proved well balanced and feasible in actual operation, rather than doctrinaire or theoretical....The Committee had no hesitancy to exercise its originality and ingenuity in situations in which its sound judgment indicated the desirability of this course....It operated in the spirit of the observation of Mr. Justice Brandeis that ‘if we would guide by the light of reason, we must let our minds be bold’.”⁷

Even though they may be less than perfect, Petitioner believes that the proposed rules will significantly further the goals of the Justice Court 2020 Strategic Agenda, and Petitioner recommends adoption of the revised Justice Court Rules of Civil Procedure attached to this amended petition.

Petitioner also recommends that the Court extend the term of the Committee for one year beyond the effective date of the rules. This would allow the members to reconvene after a period of use, to evaluate any issues that have arisen under the

⁷ Alexander Holtzoff, “Origin and Sources of the Federal Rules of Civil Procedure,” 30 N.Y.U.L. Rev. 1057, 1058-1059 (1955)

rules during their day-to-day operation, and to propose appropriate changes prior to the January 10, 2014 rule petition deadline.

RESPECTFULLY SUBMITTED this ____ day of April, 2012

By _____
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